In view of the decision of the Court of Appeal in *Lemon* v. *Lardeur* to which I have referred *Simmons* v. *Crossley*[5] on which considerable reliance was placed by the defendant, can no longer be regarded as good law.

The case of *Khoo Soo Cheow* v. *Kam Teik Sean*[6] further relied on by the defendant can also no longer, in my view, be regarded as good law in the light of more recent authority.

In the result the appeal must be allowed with costs. Deposit to appellant.

Appeal allowed.

Solicitors: *R. C. H. Lim & Co.; Allen & Gledhill.*

TEOH SOO TOK v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) September 20, 1960]

[Penang — Criminal Appeal No. 27 of 1960]

Dangerous Drugs Ordinances, 1953, s.2 — What constitutes Indian Hemp — Question of Evidence.

The appellant was charged with unlawful possession of more than 40 lbs. of Indian Hemp and was convicted and fined $1,000 or 6 months imprisonment in default of payment. It was argued for the appellant that although the substance found on the appellant formed a part of a species of a plant or plants known as CANNABIS SATIVA it did not constitute the finished product known as Indian Hemp as defined in section 2 of the Dangerous Drugs Ordinances 1953.

Held: (1) the mere fact that the plants were of a species known as cannabis sativa did not justify the inference that they were Indian Hemp within the meaning of the Ordinance;

(2) although he was in possession of something from which Indian Hemp might be constituted or manufactured, there was no adequate evidence upon which he could properly be convicted of unlawful possession of Indian Hemp or an ascertained quantity of Indian Hemp.

CRIMINAL APPEAL.

David Choong for the appellant.

L. A. Massie (Deputy Public Prosecutor) for the respondent.

Rigby J.: This case was well argued by Mr. David Choong, who appeared as counsel for the appellant. At the conclusion of the hearing I allowed the appeal and set aside the conviction and fine, stating that I would give my reasons in writing for so doing. I now proceed to do so.

The appellant, a Chinese fisherman, was charged with unlawful possession of 40 lbs. 1 2/5 ozs. of Indian hemp. He was duly convicted and fined $1,000, or six months' imprisonment in default of payment.

The brief facts of the case were that at about 6.30 a.m. on the morning of the 23rd June, 1960, a party of Customs Officers raided the premises of the appellant at Tanjong Tokong Village. In a shed at the back of the house they found a cardboard carton and a gunny sack, both containing a quantity of matter subsequently produced in evidence, both in the trial Court and before this Court. One of the Customs Officers asked the appellant what it was and the appellant replied that it was something he had picked up out of the sea and brought home. In a room in the house a further quantity of the same substance was found in a paper packet. A cautioned statement was taken from the appellant a few hours later the same day. In that statement he said that he had seen a gunny sack floating in the sea. On examining it he found it to contain a substance which he thought to be grass. He brought it home and put it in the shed. He could not explain how the paper packet containing a similar substance had got into a room in his house and he thought that one of his children might have put it there.

The substance in question was considered to be Indian hemp and the appellant was duly prosecuted and convicted on this charge of possession of Indian hemp.

The matter or substance produced in evidence has all the appearance of a quantity of dried earth or earth mould mixed with twigs and dried up pieces of leaf.

Indian hemp is defined in section 2 of the Dangerous Drugs Ordinance, 1952, to mean:—

> "The dried flowering or fruiting tops of the pistillate plant Cannabis Sativa, L., from which the resin has not been extracted, under whatever name they may be designated in commerce."

The argument put forward by Mr. Choong, both in the lower Court and before this Court, was that although it may well be that the substance found formed part of a species of a plant or plants known as Cannabis Sativa, there was no sufficient evidence that it constituted what I may describe as the finished product known as Indian hemp. In my view, that contention was well founded. The evidence of the Chemist was hardly convincing. He said that he had carried out tests which satisfied him that the exhibits were from the plant known as Cannabis Sativa. But his evidence is, to my mind, open to the construction that because the plants were of the species known as Cannabis Sativa, then it followed as a necessary inference or consequence that they were Indian hemp within the meaning of the Ordinance. No evidence was given by him that they were pistillate as distinct from staminate plants, nor was any test carried out or evidence given by him as to whether or not the resin — assuming they contained resin — had, in fact, been extracted. With regard to the exhibits themselves the Chemist said:—

> "The exhibits may have a few stems. I cannot tell how much is stem and how much is flowering tops. There are also leaves."

In the absence of cross-examination and in the ordinary case, no doubt the evidence of the Chemist would reasonably and properly have been held to be sufficient to satisfy a Court that the substance found was Indian hemp. But in the particular circumstances of this case and having regard to the nature and purpose of the cross-examination I do not consider that his evidence was conclusive on this issue. The argument raised by Mr. Choong may well seem to have been of an unduly technical nature. But his contention was that from the homogeneous mass of

dried up earth, earth mould, broken twigs and dried up leaves produced in evidence before the Court, it was quite impossible to say, as alleged in the charge, that the appellant was in possession of 40 lbs. 1 2/5 ozs. of Indian hemp or, indeed, of any specified quantity of Indian hemp. It might be that he was in possession of something from which Indian hemp might be constituted or manufactured: but that was not the charge. I agreed with that contention. The Dangerous Drugs Regulations, 1952, make it an offence to cultivate the plant known as Cannabis Sativa or to manufacture, or carry on any process in the manufacture of, a drug — including, of course, Indian hemp. Whatever other offence the appellant may have committed, in my view, upon the facts of the case, there was no adequate evidence upon which he could properly be convicted of unlawful possession of 40 lbs. 1 2/5 ozs. of Indian hemp or, indeed, of any ascertained quantity of Indian hemp.

Having arrived at this conclusion it becomes unnecessary for me to deal with the further argument raised by Mr. Choong that the learned President failed to give adequate consideration to the appellant's cautioned statement — which supported the evidence he subsequently gave on affirmation at his trial — that he had found the gunny sack containing all this substance in the sea and that he had taken it home without knowing what it was. I would only make the comment that his statement that he had found it in the sea was, at least to some extent, supported by the evidence of the Chemist — given over a month after that statement had been made by the appellant — that the substance was still damp when he examined it and that the dampness appeared to be (due to) sea water.

It was for these reasons that I allowed this appeal, quashed the conviction and set aside the fine.

Appeal allowed.

Solicitors: *Lim, Lim & Oon.*

TEOH AH KOW v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) October 7, 1960]

[Penang — Criminal Appeal No. 32 of 1960]

Criminal Law and Procedure — Abetment of voluntarily causing hurt — Criminal Procedure Code (Cap. 21), s.172 — Juvenile Courts Ordinance, 1947, s.21.

The appellant aged 16 years was convicted of abetting the commission of the offence of voluntarily causing hurt to the complainant by means of a knife. Upon conviction an order was made that he be sent to the Henry Gurney School for 3 years. On appeal it was contended that there was insufficient evidence for a conviction and that the President should have complied with section 172 of the Criminal Procedure Code by giving the appellant an opportunity to recall and re-examine witnesses called by the prosecution on the amended charge.

Held: there was sufficient evidence to justify the conviction and the appeal against the conviction be dismissed, but in the particular circumstances of the case and in view of the appellant's record, the Order committing him to the Henry Gurney School for 3 years be set aside and that he be discharged under section 21 of Juvenile Courts Ordinance, 1947 conditionally upon him entering a bond.

CRIMINAL APPEAL.

Triptipal Singh for the appellant.

L. A. Massie (Deputy Public Prosecutor) for the respondent.

Rigby J. (delivering oral judgment): The appellant in this case, a lad 16 years of age, was convicted of abetting the commission of the offence of voluntarily causing hurt to the complainant by means of a knife. Upon conviction in the Juvenile Court an Order was made that he be sent to the Henry Gurney School for three years. The appeal is against both the conviction and sentence.

The brief facts of the case were that three young persons were playing cards in a back lane in Penang shortly after 8 o'clock at night when they were set upon by a gang of 5 or 6 Chinese youths. All the three persons who were then playing cards received injuries of varying nature as a result of the assault that were made upon them by these hooligans, who were armed with cutting instruments. At the close of the case for the prosecution, there being no evidence in the opinion of the trial Court that the appellant himself had caused any hurt to the complainant the charge was amended to one against him of abetting the commission of this offence of voluntarily causing hurt. The defence put up by the appellant was an alibi. The only evidence against him consisted of the identification of him by one of the three youths who were playing cards at the time. This youth said, in relation to the appellant:—

"He did not slash me, but he came with the assailants. He carried a parang. He chased me. I knew the accused for more than a year."

After the assault the complainant lodged a complaint at the Police Station that same night in which he gave the names of three of the assailants, including the accused. It is said by Mr. Triptipal Singh, for the appellant, that there was insufficient evidence of identification in this case. It may well be that the evidence of identification was slender, but the trial Court accepted the evidence of the complainant that he had known the appellant for a year, that he saw him on that occasion, and that he, in fact, named him in the complaint that he made on the same night at the Police Station. There was clearly, in my view, sufficient evidence to justify the conviction, and the appeal against the conviction is dismissed.